



**State of New Hampshire**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Local 2715, Hillsborough County  
Nursing Home Employees

Complainant

v.

Hillsborough County

Respondent

Case No: A-0426-68

Decision No. 2005-130

**PRE-HEARING MEMORANDUM AND ORDER**

**BACKGROUND**

AFSCME Local 2715, Hillsborough County Nursing Employees (hereinafter "the Union") filed an unfair labor practice complaint on June 13, 2005 alleging that the Hillsborough County Nursing Home (hereinafter "the County") has committed an unfair labor practice in violation of RSA 273-A:5 I (a), (b), (c), (e), (g), (h) and (i), by certain conduct relating to successor contract negotiations. More specifically, the Union states that on September 30, 2003 the parties established ground rules and commenced negotiations for a successor contract. Following numerous negotiation sessions, a tentative agreement was reached, but, as indicated by the Union, the Union's rank and file rejected it on April 5, 2004. The Union states that on May 7, 2004 the parties resumed negotiations but were unable to reach a new tentative agreement. According to the Union, the parties did agree at that time to hold negotiations in abeyance for one year in order to provide the union membership time to consider the County's proposal of basing step increases upon performance evaluations. The Union alleges that when the parties resumed negotiations on April 20, 2005, the County presented numerous new proposals, including the elimination of pay steps, in violation of the ground rules. Based upon the foregoing, the Union claims, among other things, that the County is bargaining in bad faith by engaging in regressive bargaining and submitting new proposals in violation of the agreed upon ground rules.

As remedies, the Union requests that the PELRB (1) find that the County is guilty of unfair labor practices in violation of RSA 273-A:5 I (a), (b), (c), (e), (g), (h) and (i); (2) order the County to cease and desist in such acts and honor the mutually agreed upon ground rules signed

(2) order the County to cease and desist in such acts and honor the mutually agreed upon ground rules signed on September 30, 2003; (3) order the County to bargain in good faith; (4) order the County to withdraw the new proposals that it presented on April 20, 2005; (5) order the County to post the Board's findings for 30 business days and make the Union whole for all expenses incurred in pursuit of the instant case.

The County filed its answer to the Union's charge on June 28, 2005. While the County admits to various chronological facts, it denies other facts and any violation of the law. The County requests that the PELRB (1) dismiss the instant improper practice charge, (2) award attorney's fees and cost to the County; and (3) whatever further relief the Board deems just and proper.

A pre-hearing conference was conducted before the undersigned hearing officer on September 16, 2005 at PELRB offices, Concord, New Hampshire. During the conference, the Union withdrew its' claims under RSA 273-A:5 I (c) and (h). The County supplemented the information provided in its' answer by stating that its actions are in conformity with the parties' negotiation ground rules, specifically paragraphs 1, 4, 9, 11 and 12 contained therein, as well as RSA 273-A. It also denies that any agreement for an alleged negotiations abeyance period.

#### PARTICIPATING REPRESENTATIVES

For the Union: Erin L Goodwin, Esq.

For the County: Carolyn M. Kirby, Esq.

#### ISSUES PRESENTED FOR BOARD REVIEW

The parties stipulated to the following issue:

Has the County failed to bargain in good faith or otherwise failed to comply with the parties' mutually agreed upon negotiation ground rules, in violation of RSA 273-A:5 I (a), (b), (e), (g) and/or (i), by the proposals it submitted at the negotiations meeting held on April 20, 2005?

If so, what shall be the remedy?

#### STIPULATED FACTS

The parties stipulated to the following facts:

1. Hillsborough County is a public employer under RSA 273-A.
2. AFSCME Council 93, Local 2715 is currently the certified exclusive representative of certain employees of the Hillsborough County Nursing Home.

3. A Bargaining Unit Certification dated June 25, 2003 identifies AFSCME Local 2715 as the certified representative for certain positions at the Hillsborough County Nursing Home.
4. The Union and the County are parties to an expired collective bargaining agreement dated July 1, 2003 through June 30, 2004. The parties are currently operating under the status quo doctrine.
5. The parties commenced negotiations on a successor agreement to the July 1, 2003 through June 30, 2004 expired collective bargaining agreement and signed "ground rules" for negotiations on September 30, 2003.
6. Negotiations proposals were exchanged and, on or about April 5, 2004, a tentative agreement was reached.
7. The Union membership failed to ratify the April 2004 tentative agreement.
8. The parties met to resume negotiations in April and May 2004.

#### WITNESSES

##### For the Union:

1. Gloria Plowell, President, Local 2715
2. Carol Luskza, Member, Union's Bargaining Team
3. Bryan Lamirande, AFSCME Staff Representative
4. Richard Burke, Past President, Local 2715
5. Gregory Wenger, County Administrator
6. Michelin Barrier (Rebuttal, if necessary)
7. Joyce Sperry (Rebuttal, if necessary)

##### For the County:

1. Thomas Flygare, County's Chief Negotiator
2. Gary Wulf, County's former Chief Negotiator
3. Bruce Moorehead, Administrator
4. Donna Dempsey, Member, County's Negotiating Team.

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. It is

understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

### EXHIBITS

#### Joint Exhibits:

1. Certification
2. Collective Bargaining Agreement
3. Intent to Negotiate 5/30/03
4. Ground Rules 9/30/03
5. 4/20/05 – Management Proposals

#### Union Exhibits:

1. Union Proposals 9/30/03, 10/10/03, 10/23/03
2. Management Proposals 10/10/03, 10/23/03
3. Tentative Agreement 4/5/04
4. Notification of Union Vote 4/6/04
5. Union Settlement Proposal 4/30/04
6. Management Settlement Counter 5/7/04

#### For the County:

None other than those marked as joint.

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

### LENGTH OF HEARING

The time set aside for this hearing will be one-half (½) day. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty (20) days prior to the date of the evidentiary hearing.

### DECISION

1. The parties' representatives shall meet, or otherwise confer, on or before **December 1, 2005** in order to explore further factual stipulations to supplement those listed above. If the parties are successful in reaching additional stipulations

of fact, counsel shall memorialize those facts and file that document with the PELRB at least five (5) days prior to the date of the hearing.

2. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.


3. The original hearing date of September 29, 2005 has been postponed due to the unavailability of a County witness. Unless otherwise cancelled or rescheduled as a result of the filing of any subsequent motion or for other good cause shown, an adjudicative hearing will be held on:

**December 8, 2005 @ 9:30 AM**

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

Signed this 21<sup>st</sup> day of September, 2005.

  
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Peter C. Phillips, Esq.  
Hearing Officer

Distribution:

Erin Goodwin, Esq.

Carolyn M. Kirby, Esq.